



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

In Re: 30542380

Date: MAR. 28, 2024

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner seeks classification as an individual of extraordinary ability in the sciences. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding the Petitioner did not establish she satisfied at least three of the initial evidentiary criteria. The matter is now before us on appeal pursuant to 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will withdraw the Director's decision and remand the matter for entry of a new decision consistent with the following analysis.

**I. LAW**

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term “extraordinary ability” refers only to those individuals in “that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of achievements in the field through a one-time achievement (that is, a major, internationally recognized award) or qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles).

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

## II. ANALYSIS

Because the Petitioner has not indicated or established receipt of a major, internationally recognized award, she must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x). The Petitioner claimed to have satisfied four of these criteria, but the Director determined the Petitioner fulfilled only two: judging at 8 C.F.R. § 204.5(h)(3)(iv) and scholarly articles at 8 C.F.R. § 204.5(h)(3)(vi). On appeal, the Petitioner maintains that she also meets the contributions of major significance criterion at 8 C.F.R. § 204.5(h)(3)(v).

Upon review of the record, we agree with the Petitioner that she satisfies the contributions of major significance criterion at 8 C.F.R. § 204.5(h)(3)(v).<sup>1</sup> The Petitioner has, therefore, overcome the basis for denial of the petition through fulfillment of three regulatory criteria. Nevertheless, granting the third initial criterion does not suffice to establish eligibility for classification as an individual of extraordinary ability. The Director must undertake a final merits determination to analyze the Petitioner’s accomplishments and weigh the totality of the evidence to determine if they establish that she has sustained national or international acclaim in the field and that she is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A)(i) of the Act; 8 C.F.R. § 204.5(h)(2), (3); *see also Kazarian*, 596 F.3d at 1119-20.

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<sup>1</sup> The record includes documentation indicating that the Petitioner’s work in *Cell* (relating to [REDACTED]) has provoked widespread commentary on its importance from others in the immunology field and has been highly cited relative to others’ work in her field. In addition, the Petitioner provided detailed letters from experts in the field explaining the nature of her original contribution and its major significance to the field. Accordingly, we agree with the Petitioner’s argument on appeal that she meets the requirements of the criterion at 8 C.F.R. § 204.5(h)(3)(v). In addition, we note that the Director’s decision erred under this criterion by requiring the Petitioner “to demonstrate a level of interest . . . commensurate with substantial national or international acclaim.” A determination regarding a petitioner’s “national or international acclaim” is a relevant consideration in the final merits determination, but not a part of the initial assessment as to whether the evidence meets the requirements of a particular regulatory criterion at 8 C.F.R. § 204.5(h)(3). *See generally* 6 *USCIS Policy Manual* F.2(B), <https://www.uscis.gov/policy-manual>.

### III. CONCLUSION

Because the Petitioner has overcome the stated reason for denial, we remand this proceeding so that the Director can render a final merits determination.

**ORDER:** The Director's decision is withdrawn. The matter is remanded for the entry of a new decision consistent with the foregoing analysis.